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IN THE UNITED STATES BANKRUPTCY COURT

IN AND FOR THE DISTRICT OF ARIZONA

In Re:) Chapter 11 – No. 2:11-bk-26500-GBN (Lipin)
NILES S. LIPIN, Debtor.) Chapter 11 – No. 2:12-bk-12418-RJH (Kesselring)
Jointly Administered as
No.: 2:11-bk-26500-GBN

In Re:) Adversary No. 2:11-ap-02323-GBN

LORAIN E. KESSELRING, Debtor.)

THE ESTATE OF ROBERT W. WALKER)
and EVE F. WALKER,)
Plaintiffs,)
v.)
NILES S. LIPIN and MARIE PIERRON,)
Defendants.)

**THE WALKER CREDITORS'
OBJECTION TO DEBTOR
LIPIN'S DISCLOSURE
STATEMENT AND PROPOSED
CHAPTER 11 PLAN**

19 The Walker Creditors¹ object to the Disclosure Statement filed by Debtor Niles S. Lipin
20 (“Lipin” or “Debtor Lipin”) on March 10, 2016 and the Chapter 11 Plan of Reorganization that
21 the Disclosure Statement describes. There are a number of reasons for this Objection.

I. LACK OF ADEQUATE INFORMATION.

23 Federal law requires that a Debtor's Disclosure Statement will not be approved without
24 the Court determining that it contains "adequate information." 11 U.S.C. § 1125(b). The

²⁵ 1 The Walker Creditors are Eve F. Walker and the Estate of Robert W. Walker who have filed Claim #13
26 (Doc. 455) against the Debtor's Bankruptcy Estate.

1 Court's determination of whether to approve such adequacy "is within the sound discretion of
2 the bankruptcy court and is to be determined on a case by case basis." In re Unichem Corp., 72.
3 95, 97 (U.S.B.C, N. D. Ill., 1987), aff'd 80 B.R. 448 (N.D. Ill., 1987). The Bankruptcy Code
4 defines "adequate information" as:

5 Information of a kind, and in sufficient detail, as far as reasonably
6 practicable in light of the nature and history of the debtor and the condition
7 of the debtor's books and records, including a discussion of the potential
8 material Federal tax consequences of the plan to the debtor, any successor to
the debtor, and a hypothetical investor . . . that would enable such a
hypothetical investor of the relevant class to make an informed judgment
about the plan

9 11 U.S.C. § 1125(a).

10 In other words, the disclosure statement should provide enough information so that a
11 typical creditor can make an informed judgment about the probable results of the Court's
12 acceptance or rejection of a particular plan. Huntington Banks v. Felcore/Lax Holdings, LP, 9
13 Fed. Appx. 669, 670 (9th Cir., 2000). In addition, such disclosures must be complete and not
14 misleading and must not omit any important information that would be necessary for the
15 reviewer to know before the reviewer could know the full effect of the Plan, especially about the
16 Plan's possible success or failure. See Duff v. United States Trustee (In re California Fidelity,
17 Inc.), 198 B.R. 567, 571 (9th Cir. BAP, 1996). Furthermore, in In re A. C. Williams Co., 24
18 B.R. 173 (U.S.B.C., N.D. Ohio, 1992), that Court set forth a number of specific criteria that
19 should be contained in a proper disclosure statement so that the Court can make a full and proper
20 determination as the adequacy of the information in the statement.

21 In Debtor Lipin's Disclosure Statement's section II(B)(2), the listing of several different
22 attorneys who represented the Debtor, the Statement fails to note that all of them except Attorney
23 Chris D. Barski were retained and paid for by Debtor's wife Lisa Charron and the fees incurred
24 and owed or paid to those other attorneys were not supposed to be charged to or paid by the
25 Debtor's Estate. The Statement does not say that those other attorneys were not paid by Ms.
26 Charron, rather than the Estate, but the cited section of the Disclosure Statement does not make

1 that clear. If the Estate has violated that original plan about Ms. Charron paying the fees
2 incurred in those other matters, that fact and any such payments would change (diminish) the
3 amount of cash that should now be in the Estate by a significant amount.

4 In Section II(B)(5)(b), the Statement varies away from reality a bit when it states that the
5 District Court matter was “settled,” when in fact that lawsuit brought by Debtor and others was
6 summarily dismissed by the District Court Judge on the merits in response to motions by the
7 defendants to dismiss the Complaint. There were no discussions of “settlement” in that matter,
8 except that the defendants agreed to waive their right to recover costs and attorneys’ fees in
9 return for Debtor Lipin waiving his right to appeal the District Court’s decision.

10 In Section II(B)(6)(c), the Statement is inaccurate when it states that the Court has ruled
11 that only a small part of the Walkers’ original Fraud Judgment Debt in the Walkers’ Claim #13
12 is possibly non-dischargeable and most of that debt is dischargeable. The fact is that the matter
13 of the full amount of the Debt that will be deemed Non-Dischargeable has not been fully
14 litigated to the Bankruptcy Judge, though it will be so litigated and decided very soon. The
15 Statement is correct when it states that the matter of possible Offsets is under still appeal.

16 The Walker Creditors wish to point out to the Court and to the other creditors that it is
17 the view and position of the Walkers that Debtor Lipin’s wife Lisa Charron who supposedly
18 funded the ancillary litigation that Special Counsel pursued for the Debtor was involved in, is a
19 person of substantial means. As Debtor Lipin’s spouse, Ms. Charron’s own assets are significant
20 and it is not fair and proper that the full and proper Estate of Debtor Lipin is not recalculated to
21 include Ms. Charron’s own assets that she brought to the marriage. It is not the intention of the
22 Walkers to officially pursue in this Court the recovery of sums for the Estate from the otherwise
23 separate household assets of Ms. Charron. Nevertheless, the Walkers still wish to remind the
24 Court and to notify the other creditors of the position of the Walkers in this regard.

25 . . .
26 . . .

1 **II. CONCLUSION.**

2 The Walker Creditors hereby vote against the approval of the suggested Plan presented
3 by Debtor Lipin, and wish to be heard at the upcoming hearing on this subject. The Walkers
4 also reiterate their position that the full amount of the Fraud Judgment Debt in their favor listed
5 in the schedules as \$1,040,832.86 is fully Non-Dischargeable and that said amount is much
6 higher when all of the accumulated interest since the dates of the Judgments in question are fully
7 taken into account.

8 Since the amount of said Non-Dischargeable Judgment Debt far exceeds any planned
9 payments by the Estate to anyone, the Walker Creditors ask only that the plans for any payments
10 from the Estate to any Creditors be delayed until this Court makes its final determination and
11 ruling on said Non-Dischargeability and then makes the necessary rulings as to how and when
12 the Debtor needs to include such plans into the overall final Chapter 11 Plan of this Debtor.

13 Given the Debtor's plans for increasing his annual income as noted in Section II(D) of the
14 Disclosure Statement, the Walker Creditors will wait his further disclosures about the results of
15 those plans, by which time the full scope of the decision of this Court on the Non-Dischargeable
16 debts will be finalized. As of right now, however, the disclosures do no project what the Debtor's
17 future income will be in dollars and such disclosures are therefore inadequate and incomplete.

18 Indeed, after (a) those initial plans of the Debtor are realized or at least undertaken and
19 reviewed if not realized and (b) the full and complete decision of the Court on Non-Discharge-
20 ability of the Walkers Claim #13 is made, then this Court should revisit the completeness of the
21 Debtors' Disclosure Statement.

22 But in the meantime, the Walker Creditors vote² to disapprove the Debtor's Disclosure
23 Statement and his Chapter 11 Plan.

24

25 ²Since no separate document labeled as a "Ballot" was distributed to the Walker Creditors, the Walker
26 Creditors assume that this Objection is sufficient for the purpose of voting to approve or disapprove the Disclosure
Statement or the proposed Chapter 11 Plan.

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RESPECTFULLY SUBMITTED, this 7th day of April, 2016.

THE KEATING LAW FIRM, PLC

By: /s/ Kevin R. Keating (#012216)
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CERTIFICATE OF SERVICE

I hereby certify that on April 7, 2016, I electronically transmitted the foregoing document to the Office of the Clerk of the U. S. Bankruptcy Court using the CM/ECF system for filing and I transmitted, electronically, a copy of the foregoing document to the following CM/ECF registrants on the service lists of this jointly administered U. S. Bankruptcy Court proceeding and its related Adversary Proceeding:

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